

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Tobacco License  
Held by Arbor Pointe Liquors

**FINDINGS OF FACT,  
CONCLUSIONS AND  
DECISION**

The above-entitled matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy, serving as hearing examiner for Dakota County, on December 3, 2008, at the Dakota County Attorney's Office, Dakota County Judicial Center, 1560 Highway 55, Hastings, Minnesota. The record closed at the conclusion of the hearing that day.

Andrea G. White, Assistant County Attorney, Dakota County Judicial Center, 1560 Highway 55, Hastings, MN 55033, appeared for the County. Chad Tenkley, President, Arbor Pointe Liquors, LLC, 9084 Buchanan Trail, Inver Grove Heights, MN 55076 (Licensee), appeared without counsel.

**STATEMENT OF ISSUES**

Did the Licensee sell cigarettes to a minor in violation of Dakota County Ordinance No. 125, and if so, is the adverse action taken by the County consistent with the Ordinance?

The Administrative Law Judge concludes the Licensee did sell cigarettes to a minor on September 3, 2008, and that the adverse action taken by the County is appropriate for this violation.

Based on all of the proceedings herein, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

1. Since December 2004, Chad Tenkley has owned and operated Arbor Pointe Liquors in Inver Grove Heights. Arbor Pointe Liquors has a tobacco license, which it maintains as a convenience to its customers. Tobacco sales generate little revenue for the business. Tenkley works full-time and generally employs three part-time persons.<sup>1</sup>

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<sup>1</sup> Testimony of Chad Tenkley.

2. In 2005, Arbor Pointe Liquors passed three tobacco compliance checks.<sup>2</sup> On November 1, 2006, a part-time employee failed to ask for identification and sold cigarettes to a minor during a compliance check. The County issued a Notice of Violation and fined Arbor Pointe Liquors \$75 for its first offense.<sup>3</sup> In December 2007, Arbor Pointe Liquors passed another tobacco compliance check.<sup>4</sup>

3. On August 26, 2008, Tenkley hired a new part-time employee. The employee was a 28-year-old college graduate who was working full-time at another job and desired additional income from part-time work.<sup>5</sup> The new employee worked two three-hour shifts with another employee to become oriented to store procedures. Tenkley gave the employee written materials produced by the County regarding the Tobacco Ordinance, and the employee signed an agreement acknowledging that he had reviewed the material and understood that failure to comply with the ordinance could result in fines or disciplinary action, including loss of job.<sup>6</sup>

4. While working his first shift by himself on September 3, 2008, the new employee sold cigarettes to a minor during a compliance check. The employee asked for identification, looked at the identification provided (which contained the minor's correct date of birth), and then sold the cigarettes as requested.<sup>7</sup> The employee later explained that he had calculated the minor's age incorrectly. The employee was given a criminal citation and quit his employment at Arbor Pointe Liquors the next day.<sup>8</sup>

5. The County issued a Notice of Violation to Arbor Pointe Liquors. Because this was a second offense, the penalty was a fine of \$200 and a one-day suspension of the tobacco license.<sup>9</sup>

6. Arbor Pointe Liquors made a timely request for a hearing, and the County issued a Notice and Order for Hearing on November 17, 2008.

## **CONCLUSIONS**

1. The Administrative Law Judge has jurisdiction in this matter pursuant to Dakota County Ordinance #125, Section 1400.

2. The County gave the Licensee timely and proper notice of the hearing in this matter.

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<sup>2</sup> Ex. 8.

<sup>3</sup> Ex. 2.

<sup>4</sup> Ex. 8.

<sup>5</sup> Ex. 7.

<sup>6</sup> Test. of C. Tenkley; Ex. 6.

<sup>7</sup> Ex. 1 (Tobacco Compliance Check form).

<sup>8</sup> Test. of C. Tenkley; Ex. 4. The criminal charge was continued for dismissal. See Ex. 5.

<sup>9</sup> Ex. 1.

3. It is a violation of Dakota County Ordinance #125, Sections 600 and 1000, for any person to sell tobacco to any person under the age of 18 years. All licensees under the Ordinance are responsible for the actions of their employees in regard to the sale of tobacco on the licensed premises, and the sale of such an item by an employee is considered a sale by the license holder for purposes of imposing a civil penalty, license suspension, or revocation.<sup>10</sup>

4. Law enforcement authorities are required to conduct compliance checks at least once per year to ensure compliance with the provisions of the Ordinance.<sup>11</sup>

5. Any licensee found to have violated the Ordinance, or whose employee shall have violated the Ordinance, shall be charged an administrative fine of \$200 for a second offense and a one-day suspension of the license, where the second violation occurs at the same licensed premises as the first violation, within a 24-month period.<sup>12</sup>

6. The Licensee violated Dakota County Ordinance #125, Section 1000, subd. 1, when its employee sold cigarettes to a minor on September 3, 2008.

7. A fine in the amount of \$200 and a one-day suspension of the tobacco license is the required penalty under the Ordinance because the Licensee had a previous violation within 24 months.

Based on the foregoing Conclusions, the Administrative Law Judge makes the following:

### **DECISION**

The Penalty Order issued to Arbor Pointe Liquors is AFFIRMED. The Licensee shall serve the one-day suspension of its tobacco license on Monday, January 5, 2009, or such other date as determined by the Office of the Dakota County Treasurer-Auditor.

Dated: December 16, 2008

s/Kathleen D. Sheehy  
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KATHLEEN D. SHEEHY  
Administrative Law Judge

Reported: Digitally recorded (no transcript prepared)

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<sup>10</sup> Dakota County Ordinance 125, Section 1000.

<sup>11</sup> *Id.*, Section 1100.

<sup>12</sup> *Id.*, Section 1300

## **NOTICE**

This Report constitutes the final decision in this matter. Any appeal of this decision must be filed with the Dakota County District Court within ten days of the mailing of this decision, pursuant to Dakota County Ordinance #125, Section 1400g.

## **MEMORANDUM**

The owner of Arbor Pointe Liquors supports the laws prohibiting the sale of tobacco to minors and is frustrated that his employees have violated the law, despite his efforts to train them. He believes that he could have done nothing more to prevent this violation, and he argues he should not be penalized unless and until the County assumes more responsibility for helping small business owners comply with the law.

It is apparent, however, that the owner could do more to provide preventive education to employees than hand them the written materials provided by the County with instructions to read the materials and sign the employee agreement. The Licensee is responsible not just for giving this information to employees, but for making sure they have read it and understand how to use the information before they are asked to work independently. And although the Licensee had posted a calendar in the store identifying the legal birth date for purchasing alcohol, he had no such calendar identifying the legal birth date for purchasing cigarettes. Under all the circumstances, the responsibility for this violation is properly placed on the Licensee.

**K.D.S.**